

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH WRIGHT on his own behalf and
on behalf of other similarly situated persons,

Plaintiff,

v.

Lyft, Inc., a Delaware Corporation

Defendants.

Case No. 2:14-cv-0421

SECOND AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES

CLASS ACTION

JURY DEMAND

I. INTRODUCTION

1. With the push of a single button, modern computers can transmit text messages to millions of telephones. To advertisers, this is a powerful and irresistible method of mass communication. At very minimal cost, a business can achieve targeted, immediate, and vast promotion of its brand. At the same time, text messages are uniquely personal. Each advertisement directs special importance to itself by causing a telephone to buzz or ring, and the advertisement is placed quite literally into the hands of a consumer.

2. The defendant, Lyft, Inc., markets its products and services through text message advertisements sent in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, the Washington Consumer Electronic Mail Act ("CEMA"), RCW 19.190.010 et seq., and the Washington Consumer Protection Act ("CPA"), RCW 19.86.010, et seq.

3. Plaintiff Kenneth Wright (“Representative Plaintiff”), on his own behalf and on behalf of all other similarly situated persons, brings this Complaint for Injunctive Relief and Damages to obtain from defendant all damages, injunctive relief, attorneys’ fees, costs, and other remedies Plaintiffs are entitled to recover under law and equity.

II. JURISDICTION AND VENUE

4. Federal question jurisdiction exists pursuant to 28 U.S.C. § 1367(a) because Plaintiff asserts legal claims under federal law, the TCPA. Pursuant to 28 U.S.C. § 1367(a), federal supplemental jurisdiction over the CEMA and CPA claims alleged in this complaint.

5. Many of the wrongful acts and omissions referenced in this complaint occurred, were initiated, were furthered, or were given assistance in this district.

6. Defendant conducts business and has harmed consumers in this district.

7. Venue is proper in this Court.

III. PARTIES

8. Plaintiff Kenneth Wright is an individual domiciled and residing in King County, Washington.

9. Defendant Lyft, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in San Francisco, California. Defendant, acting directly or else through other persons acting on its behalf, conspired to, agreed to, contributed to, assisted with, or otherwise caused all of the wrongful acts and omissions that are the subject of this complaint. To the extent that Defendant acted as alleged in this complaint through another person, such other persons were acting within actual or ostensible authority provided by Defendant, and Defendant ratified each act. Defendant had actual and ultimate control over every act or omission attributed to Defendant in this complaint. But for the conduct of Defendant and others acting on its behalf, none of the wrongful acts and injuries alleged herein would have occurred.

IV. FACTUAL ALLEGATIONS

10. Defendant is a transportation network company. Its mobile telephone application (“Lyft”), in conjunction with Defendant’s computer systems, create a platform for on-demand peer-to-peer ridesharing. Upon information and belief, Lyft has been installed on up to 500,000 mobile telephones across the United States.

11. In order to request a Lyft car, a rider must download the Lyft application to their iPhone or Android-based mobile telephone, sign-in through Facebook Connect, and enter a valid telephone number and credit card. When a passenger wants a ride, he or she launches the application, which displays a map of the nearest Lyft drivers. The user taps the screen to request a ride, and the application then displays the driver's name, his or her passenger ratings, and photos of the driver and his or her car.

12. Defendant receives revenue for each ride arranged through its mobile application. All payments are made through the application. The payment requested from each rider includes a \$1.50 “Pickup Fee,” a \$1 “Trust and Safety Fee,” and a ride fee that is calculated based on time (\$0.35 per minute) and distance (\$1.90 per mile). Lyft receives the \$1 Trust and Safety Fee and 20% of the total fare.

13. Lyft and other aggressive developers of mobile phone apps engage in a pernicious form of text message marketing known as “spam-viting” or “mobile growth hacking.”¹ Spam-

¹ See Dieter Bohn, *OS Apps and the Address Book: Who Has Your Data, and How They’re Getting It*, *The Verge* (Feb. 14, 2012), (<http://www.theverge.com/2012/2/14/2798008/ios-apps-and-the-address-book-what-you-need-to-know>); Sarah Perez, *When Growth Hacking Goes Bad*, *Techcrunch*, (<http://techcrunch.com/2014/01/03/when-growth-hacking-goes-bad/>); Sarah Perez, *Video Texting App Glide is Going “Viral,” Now Ranked Just Ahead of Instagram in App Store*, *Techcrunch* (May 8, 2015) (<http://techcrunch.com/2013/07/24/video-texting-app-glide-is-going-viral-now-ranked-just-ahead-of-instagram-in-app-store/>) (referring to the action of an application accessing a user’s contact lists and sending pre-written invitational text messages as “spam-vit[ing]”); Sam Biddle & Nitasha Tiku, *Did Path Cheat Its Way to the Top?*, *Valleywag* (June 12, 2013) (<http://valleywag.gawker.com/did-path-cheat-its-way-to-the-top-494127268>); c.f. *McKenna v. WhisperText*, No. 5:14-CV-00424-PSG, 2015 WL 5264750, at *2 (N.D. Cal. Sept. 9, 2015) (referring to “spam-viting” and “mobile growth hacking”).

1 viting works like this: when a user downloads an app to their mobile device, the app developer
2 seeks to lure or bribe the user into allowing access to their electronic address book. *See id.* The
3 app software and the app developer's hardware are programmed to search for and harvest mobile
4 telephone numbers from the device and to send pre-written, automated text messages to third
5 parties encouraging them to download the app. By design, the app company's software and
6 hardware are programmed to collect data from the user's device and to send unsolicited text
7 messages promoting the company's products and services to third parties. *See id.*

8 14. In today's ultra-competitive app industry, spam-viting is sometimes unleashed by
9 app developers in waves as a means to quickly boost a user base, particularly before a
10 fundraising campaign or potential acquisition. *See id.* The practice has prompted complaints
11 from consumers across the United States, not only from consumers who have received
12 unsolicited text message spam, but also from app users who had no idea that their contacts would
13 be spammed with commercial text messages. *See id.*

14 15. This case addresses a spam-viting campaign carried out by Defendant Lyft, Inc.
15 Lyft lured users into unlocking their address books by offering financial rewards to "invite"
16 others to download the Lyft App.

17 16. Defendant has engineered into its application a function that that collects
18 information from the mobile telephones of its users and transfers it to computer systems under
19 Defendant's possession, custody, or control (herein "Defendant's computer systems"). In one
20 such feature, the Lyft app harvests, from its users' telephones, third-party "contacts" and
21 telephone numbers and information regarding third-party consumers who are not Lyft app users.
22 After harvesting telephone numbers from the mobile telephones of Lyft app users, Defendant's
23 computer systems store the telephone numbers and then automatically transmit programmatically
24 generated text message advertisements to the telephone numbers which are assigned to a cellular
25 telephone service subscriber. Defendant's computer system has the present and proven ability to
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1 dial numerous cellular telephone numbers and transmit numerous text messages to large lists of
2 stored cellular telephone number without any human involvement by any person. More simply
3 stated, the Lyft app harvests cellular telephone numbers from its users and transmits these
4 telephone numbers to Defendant's computer systems for the sole purpose of Defendant's
5 computer systems to send automated spam advertising text messages to the cellular telephone
6 numbers of consumers who do not yet use the Lyft app.
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8 17. Defendant's scheme to capture consumer contact information, including cellular
9 telephone numbers, for its spam messages begins by luring Lyft app users into allowing the
10 harvest of third-party consumer information. Defendant entices consumers to allow the Lyft app
11 to harvest cellular telephone numbers and other consumer information from their telephones by
12 promising each user \$25 for any third-party who signs up to use the Lyft app in response to
13 advertising text messages sent by Defendant's computer systems.
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15 18. Thus, for example, a Lyft app user who has hundreds of "contacts" stored in their
16 cellular telephone, is enticed with the potential to receive thousands of dollars in ride credits if
17 they allow the Lyft app to harvest the data of all of their contacts so that it can be provided to
18 Defendant's computer systems. Defendant essentially is paying Lyft app users for consumer data
19 pertaining to nonusers of Defendant's products.
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21 19. To allow the Lyft app programmatically to transmit nonuser data to Defendant's
22 computer systems, in exchange for a promise of consideration, consumers are instructed to
23 access an "invite friends" function. Consumers identify the consumers whose data will be
24 transmitted to Defendant's computer systems, or consumers can "Select All" in order to transmit
25 all contact information in their telephone to Defendant's computer systems. Defendant's
26 computer systems then harvest the consumer information and Defendant's computer systems
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1 process the data and sequentially generate advertising text message to nonusers of Defendant's
2 products. The text messages are sent by Defendant or its agents; the text messages are not sent
3 through a Lyft app user's cellular telephone or cellular service carrier.

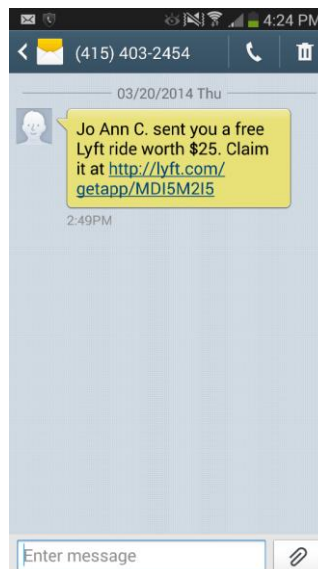
4 20. Sample screenshots from Lyft's "invite" function are attached as Exhibit A. Lyft
5 users were not informed *how* any "invites" would be sent. Lyft did not tell users whether an
6 "invite" would be sent by U.S. Mail, email, a personal telephone call, or some other method.
7 When accessing the "invite" function, the app showed only a list of names without contact
8 information (*see* Appendix A), and no information regarding residential addresses, email
9 address, or mobile telephone numbers. Lyft did *not* disclose that any person would be called, or
10 that a person would be spammed with a commercial text message to a cellular telephone.
11 Without any such notice to users, Lyft's computers extracted telephone numbers and sent
12 promotional text messages written by Lyft. Lyft users were not informed of what the text
13 messages would say; they had no power to control any of the contents of the messages; and had
14 no information on how they would be sent. The Lyft app told user's only that an "invite" was
15 sent, but not whether it was by mail, email, or text message. The messages were sent through
16 Lyft's computers, not by the users' telephones, so Lyft users did not receive any records of sent
17 text messages on their telephone bill or in a "sent items" folder on their device. To this day,
18 many consumers may have no idea that text messages were sent.

19 21. As designed, created, implemented, utilized, and deployed by Defendant, the
20 system by which the Lyft app harvests data from its users' telephones, and automatically
21 generates spam text messages to thousands of consumers, operates as an automated telephone
22 dialing system ("ATDS") as that term is defined under the TCPA. Defendant carried out and
23 otherwise substantially assisted with an aggressive marketing campaign which has relied upon
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1 this ATDS functionality. Defendant's computer systems generate commercial advertisements on
 2 behalf of the Defendant and, in an automated manner, sequentially transmits these
 3 advertisements as unsolicited short message system ("SMS") text messages to stored lists of
 4 cellular telephone numbers.

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 6 22. Lyft is locked in a fierce battle with the industry leader, Uber, to win market share
 7 across the United States. *See* Eric Newcomer, Leslie Picker, *Leaked Lyft Document Reveals a*
 8 *Costly Battle with Uber*, Bloomberg (Apr. 30, 2015)
 9 ([http://www.bloomberg.com/news/articles/2015-04-30/leaked-lyft-document-reveals-a-costly-](http://www.bloomberg.com/news/articles/2015-04-30/leaked-lyft-document-reveals-a-costly-battle-with-uber)
 10 [battle-with-uber](http://www.bloomberg.com/news/articles/2015-04-30/leaked-lyft-document-reveals-a-costly-battle-with-uber)). The Wall Street Journal has called the battle between Uber and Lyft "Tech's
 11 Fiercest Rivalry." *See* Douglas MacMillan, *Tech's Fiercest Rivalry: Uber vs. Lyft*, Wall Street
 12 Journal (Aug. 11, 2014) ([http://www.wsj.com/articles/two-tech-upstarts-plot-each-others-](http://www.wsj.com/articles/two-tech-upstarts-plot-each-others-demise-1407800744)
 13 [demise-1407800744](http://www.wsj.com/articles/two-tech-upstarts-plot-each-others-demise-1407800744)). Lyft's spam-viting campaign for new customers may have been
 14 advantageous in its battle against its arch-rival, but the tactics are decidedly illegal under both
 15 federal and Washington law

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 17 23. Defendant's marketing campaign and its ATDS have injured numerous
 18 consumers, including plaintiff. On March 20, 2014, plaintiff received the following unsolicited



1 text message from Defendant:

2 24. This message was sent by Defendant's computer systems, which are ATDSs. It
3 was not sent by "Jo Ann C." The originating telephone number that appeared for this message,
4 (415) 403-2454, is from an area code in San Francisco, California, where Defendant is
5 headquartered. This number is used by Defendant to send its automated spam advertising text
6 messages to consumers.

7 25. Furthermore, the "Jo Ann C," who is nominally mentioned in Defendant's text
8 message did not ask for or possess plaintiff's consent to allow Defendant to harvest his contact
9 information. Plaintiff had only one short business-related interaction with plaintiff for one hour,
10 on one day more than a year ago. Other than that one brief interaction, plaintiff does not know
11 "Joann C" and does not speak or otherwise interact with her. Plaintiff also does not know how
12 Joann C obtained his telephone number. These facts indicate that "Joann C" was enticed by
13 Defendant's promised consideration to allow the Lyft app to harvest information from her
14 telephone contact records, including on individuals such as plaintiff, whom she barely knows.

15 26. As part of its marketing scheme, Defendant used a system of electronic
16 transmission devices which have the capability to send tens of thousands of text messages to
17 consumers in an automated manner, and thereby sent the unsolicited text messages substantially
18 similar, if not identical, to the text message identified above to numerous consumers throughout
19 the United States, including Plaintiff. Considering that the Lyft app is used by thousands of
20 consumers every day, Defendant sent far more text messages than humans could manually
21 transmit in an economical manner. The transmission of so many unsolicited text messages
22 burdened or injured the telecommunications infrastructure through which all text messages must
23 pass. As a consequence, cellular service providers incurred avoidable costs which negatively
24 impact the price that consumers like Plaintiffs must pay for cellular telephone services.

25 27. Consumers have no effective means to avoid the receipt of unsolicited text
26 messages. Prior to the transmission of these text messages, none of the consumers to whom these
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1 text messages were directed provided defendant with consent to be sent the text messages.
2 Defendant did not obtain prior consent from the intended recipients before sending these text
3 messages. Nor did Defendant have any reasonable basis upon which to conclude that the
4 intended recipients of these text messages had invited the text messages sent by Defendant's
5 computer systems.

6 28. Upon information and belief, Defendant's computer systems extract and provide
7 to Defendant non-public and personal information of consumers, including contact information
8 located on the cellular telephones of users. The information extracted includes the personal
9 information for individuals who are not customers and have not authorized Lyft to store their
10 information.

11 29. The SMS text message sent to Plaintiff was typical of messages sent to numerous
12 other consumers. The links in these messages were designed and intended by Defendant to
13 connect Plaintiff and consumers like him to websites through which Defendants offered financial
14 incentives calculated to cause consumers to download and install Lyft onto their cellular
15 telephones and to use Defendant's services, this generating revenue and profit for Lyft. This
16 promotional scheme is no different than a car dealer offering a free gift if someone comes to text
17 drive a car at their showroom. The "free" gift merely is the bait that masks the hook by which car
18 dealers—like Defendant here—hope to make one or more subsequent sales for profit. The text
19 messages sent by Defendant's computer systems to Plaintiff and consumers like him all
20 promoted, directly or indirectly, the sale of Defendant's services through the Lyft app. Moreover,
21 the text messages deceptively omit that consumers would have to agree to provide other
22 consideration before Defendant would permit them to use the Lyft app and the so-called credit.

23 30. By the conduct detailed above, Defendant, directly or through its authorized or
24 ostensible agents, engaged in unlawful and otherwise wrongful marketing and advertising
25 practices. These practices have damaged Representative Plaintiff and persons similarly situated.
26 Defendant used its automated computer systems to cause the transmission of unsolicited
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1 electronic commercial text messages to the cellular telephone numbers assigned to
2 Representative Plaintiff and numerous other consumers.

3 31. Defendants' conduct above negatively affects the public interest. Defendant
4 caused the unsolicited transmission of numerous SMS text messages to numerous consumers
5 throughout the United States and its territories, including Washington State.

6 32. Plaintiff did not provide his cellular telephone number to defendant or
7 Defendant's agents for the purpose of receiving marketing messages via text message or any
8 other telephonic communication. Nor did he provide authorization or consent to defendant to
9 send any text message or to store his personal contact information for purposes of marketing.
10 Defendant nevertheless sent Plaintiff the text message identified above. Plaintiff's receipt of this
11 unsolicited text message surprised and annoyed Plaintiff. Like other similarly situated persons
12 who were sent such text messages, Plaintiff was injured as a result of Defendant's transmission
13 of the text message in ways including, but not limited to, the following: (a) Having to pay a
14 cellular service provider to receive the unsolicited text message from Defendant; (b) Invasion of
15 privacy; (c) Aggravation and annoyance from having to retrieve or administer the unsolicited
16 text message on the cellular telephone which received the unsolicited text message; (d) Loss of
17 use of the full capacities and capabilities, *e.g.*, electronic storage space, of the cellular telephone
18 which received the unsolicited text message; (e) Loss of energy stored in the battery of the
19 cellular telephone which received the unsolicited text message; and (f) Impairment, burden, or
20 injury to the cellular telephone network upon which Plaintiff and consumers like him rely.

21 33. By the conduct detailed above, Defendant directly or through authorized or
22 ostensible agents acting within the scope of their authority, or else as subsequently ratified,
23 caused the unlawful transmission of text messages to the cellular telephone numbers of Plaintiff
24 and other similarly situated consumers and otherwise engaged in unlawful marketing and
25 advertising practices.
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V. CLASS ACTION ALLEGATIONS

34. Representative Plaintiff brings this class action on behalf of himself and as a representative of the following class of persons entitled to remedies under the Telephone Consumer Protection Act including, but not limited to, damages:

All persons in the United States of America who were sent, to their cellular telephone numbers, at least one text message containing an advertisement or promotion to download the Lyft app, where the text message was sent through Defendant's computer systems.

35. Representative Plaintiff also brings this class action on behalf of himself and as a representative of the following persons (the "Washington Subclass") who are entitled to remedies under Washington State law including, but not limited to, damages:

All persons in Washington State who were sent, to their cellular telephone numbers, at least one text message containing an advertisement or promotion to download the Lyft app, where the text message was sent through Defendant's computer systems.

36. Plaintiff's class claims satisfy all of the requirements for class action certification pursuant to the Civil Procedure Rules 23(a) and 23(b)(1), 23(b)(2), and 23(b)(3).

37. Satisfying all requisite numerosity requirements, numerous consumers in the United States are believed to be members of this class. Joinder of so many class members in to a single action is impracticable. In fact, given the number of class members, the only way to deliver substantial justice to all members of the class is by means of a single class action.

38. There are questions of fact and law common to the class, which predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from defendants' conduct include, without limitation, the following:

- Whether defendant negligently, willfully, and/or knowingly caused violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, when sending unsolicited text messages to Representative Plaintiff and the class?
- Whether defendant used an automated telephone dialing system ("ATDS") to send text messages to Plaintiff?

- Whether defendant's text messages are "commercial electronic text messages" under the Washington Consumer Electronic Mail Act.
- Whether Defendants negligently and/or willfully caused violations, including *per se* violations, of the Washington Consumer Protection Act, RCW 19.86.10, *et seq.*, when sending unsolicited text messages to Representative Plaintiff and the Washington Subclass?
- Whether any Defendants are vicariously or otherwise liable for unsolicited text messages sent to Plaintiff and the class?

39. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of Plaintiffs' claims.

40. Representative Plaintiff's claims are typical of those of the class in that he, just like the other members of the class, was the victim of the unlawful marketing practices referenced in this complaint. The text message which Representative Plaintiff received is typical of the text messages which were transmitted to other members of the class.

41. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendant has acted in a general manner to the damage of the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of class members to protect their interests. Moreover, the individual damages of each of the class members are so low that it would be economically impracticable for putative class members to bring their claims individually.

42. A primary factor in Plaintiff's bringing this case is for final injunctive relief which is necessary and appropriate to ensure that Defendant ceases its unlawful and wrongful conduct. A class action is the most efficient means to ensure that Defendant does not injure the

1 class in the future.

2 43. Representative Plaintiff is an adequate representative of the class because he is a
3 member of the class and his interests do not conflict with the interests of the members of the
4 class he seeks to represent. The interests of the members of the class will be fairly and
5 adequately protected by Representative Plaintiff. Representative Plaintiff is represented by
6 attorneys who have extensive, multi-jurisdictional experience representing clients in complex
7 class action litigation.

8 44. Maintenance of this action as a class action is a fair and efficient method for the
9 adjudication of this controversy. It would be impractical and undesirable for each member of the
10 class who suffered harm to bring a separate action. In addition, the maintenance of separate
11 actions would place a substantial and unnecessary burden on the courts and could result in
12 inconsistent adjudications, while a single class action can determine, with judicial economy, the
13 rights of all class members.

14 45. If this action is not certified as a class action, then the only way that the court
15 system will not be overburdened by a multiplicity of suits over the subject matter of this
16 complaint is if members of the class cannot or do not pursue an action against Defendant for
17 reasons altogether unrelated to the merits of their claims, *e.g.*, challenges in accessing legal
18 counsel, the mundane realities of surviving in a challenging economy, *et cetera*. Most Plaintiffs
19 can obtain legal representation for their claims only through a class action. The only practical
20 way to ensure that all members of the class are afforded an opportunity to obtain substantial
21 justice with regard to the wrongs and injuries inflicted upon them by defendants is to resolve the
22 subject matter of this complaint through a class action.

23 **VI. FIRST COUNT**
24 **Violations of the Telephone Consumer Protection Act**
25 **(Representative Plaintiff and the National Class vs. Defendant)**

26 46. Plaintiff reasserts and re-alleges the allegations set forth in the above paragraphs
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1 as if the same were alleged herein this count.

2 47. At all times material herein, Plaintiff has been entitled to the rights, protections,
3 and benefits provided under the Telephone Consumer Protection Act, 47 U.S.C. § 227.

4 48. Negligently, recklessly, willfully, and/or intentionally, Defendant directly and/or
5 vicariously engaged in acts, omissions, and/or other actions that violate the Telephone Consumer
6 Protection Act. Defendants directly and/or vicariously created, designed, deployed, and
7 otherwise used an ATDS which harvested consumer telephone numbers and initiated numerous
8 telephone calls to cellular telephone numbers. These telephone calls transmitted unsolicited
9 commercial text messages to the cellular telephones of Representative Plaintiff and the other
10 Plaintiffs as referenced in this complaint.

11 49. Plaintiff and each member of the proposed class are entitled to recover \$500 in
12 damages from the defendants for each violation of the Telephone Consumer Protection Act.

13 50. Additionally, Plaintiffs are entitled to all damages referenced herein and in accord
14 with proof, attorneys' fees, costs, treble damages, and other remedies allowed by the Telephone
15 Consumer Protection Act or else otherwise permitted by law.

16 51. The defendants should cease their unlawful conduct now and in the future with (a)
17 a judicial declaration which clearly states the illegality of the conduct and (b) an injunction
18 barring defendants from engaging in such illegal conduct in the future.

19 **V. SECOND COUNT**
20 **Violations of the Washington Commercial Electronic Mail Act**
21 *(Representative Plaintiff and the Class vs. Defendant)*

22 52. Plaintiff reasserts and re-allege the allegations set forth in the above paragraphs.

23 53. At all times material herein, Plaintiff has been entitled to the rights, protections,
24 and benefits provided under the Washington Commercial Electronic Mail Act ("CEMA"), RCW
25 19.190.010 *et seq.*

26 54. CEMA prohibits "the transmission of an electronic commercial text message to a
27 telephone number assigned to a Washington resident for cellular telephone or pager service."

1 RCW 19.190.060.

2 55. In enacting CEMA, the Washington Legislature stated as follows regarding its
3 legislative findings and intent:

4 The legislature recognizes that the number of unsolicited commercial
5 text messages sent to cellular telephones and pagers is increasing.
6 This practice is raising serious concerns on the part of cellular
7 telephone and pager subscribers. These unsolicited messages often
8 result in costs to the cellular telephone and pager subscribers in that
9 they pay for use when a message is received through their devices.
The limited memory of these devices can be exhausted by unwanted
text messages resulting in the inability to receive necessary and
expected messages.

10 The legislature [intends] to limit the practice of sending unsolicited
11 commercial text messages to cellular telephone or pager numbers in
Washington.

12 2003 Wn. Legis. Serv. 137, Sec. 1.

13 56. Defendant's actions violated CEMA. Plaintiffs are entitled to damages of \$500
14 per illegal text message.

15 **VI. THIRD COUNT**
16 **Violations of the Washington Consumer Protection Act**
(Representative Plaintiff and the Class vs. Defendant)

17 57. Plaintiff reasserts and re-alleges the allegations set forth in the above paragraphs.

18 58. At all times material herein, Plaintiff has been entitled to the rights, protections,
19 and benefits provided under the Washington Consumer Protection Act and related Washington
20 statutes.

21 59. Defendant's practice of transmitting and/or assisting in the transmission of
22 electronic commercial text messages to Plaintiffs' cellular phones is a violation of RCW
23 19.190.060. This violation, per statute, is a *per se* violation of Washington's Consumer
24 Protection Act, RCW 19.86.010, *et seq.*

25 60. Defendant's practice of transmitting and/or assisting in the transmission of
26 electronic commercial text messages to Plaintiffs' cellular phones is conduct that vitally affects
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1 the public interest and is an unfair or deceptive act in trade or commerce and an unfair method of
2 competition for the purpose of applying the Consumer Protection Act, RCW 19.86.010, *et seq.*

3 61. Defendant conducted these practices in the scope of its trade and in furtherance of
4 the development and preservation of such business services.

5 62. Defendant's violations of the Consumer Protection Act are intentional, willful,
6 and subject to treble damages under RCW 19.86.010, *et seq.*

7 63. Plaintiffs have suffered injuries to their persons and property as a direct result of
8 Defendant's numerous violations of RCW 19.86.010, *et seq.*

9 64. Defendant's practices are emblematic of organizational policies and agreements
10 which have caused and, if unabated, will continue to cause incidents, occurrences, and conduct
11 which violate RCW 19.86.010, *et seq.*, and RCW 19.190.010, *et seq.*

12 65. Plaintiffs are entitled to recover damages for each of the violations of RCW
13 19.86.010, *et seq.*, in amounts set forth by law.

14 66. Plaintiffs are further entitled to recover damages for each of the violations under
15 RCW 19.190.010, *et seq.*, in amounts set forth by law and otherwise in accord with proof to be
16 provided at trial.

17 67. Plaintiffs will continue to be damaged if Defendant is not compelled to cease and
18 desist unlawful conduct and unfair, deceptive, and unlawful practices.

19 Plaintiffs are further entitled to all attorneys' fees, costs, and treble damages as allowed by RCW
20 19.86.010, *et seq.*, and as otherwise permitted by law

21 **VII. PRAYER FOR RELIEF**

22 WHEREFORE, Representative Plaintiff, and all others similarly situated, demand
23 judgment against defendants and pray this Court do the following:

24 A. Issue a declaration which makes clear the illegality of defendant's wrongful
25 conduct.

26 B. Grant a permanent injunction enjoining defendant, its officers, successors, agents,
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1 assigns, and all persons in active concert or participation with Defendant, from engaging in the
2 unlawful conduct, including without limitation using an automated telephone dialing system to
3 send unsolicited text messages.

4 C. Grant a permanent injunction enjoining defendant, its officers, successors, agents,
5 assigns, and all persons in active concert or participation with Defendant, from sending any more
6 telemarketing text messages to residents of Washington.

7 D. Declare that the subject text messages are commercial electronic text messages.

8 E. Declare that Defendant's computer systems are an ATDS under the TCPA.

9 F. Declare that Defendant did not first obtain any consent before sending the subject
10 text messages to Plaintiffs.

11 G. Declare that Defendant's actions as alleged in this complaint violate the TCPA,
12 CEMA, and CPA.

13 H. Order defendant to make Representative Plaintiff and the other class members
14 whole by providing compensation for past and future pecuniary losses resulting from the
15 unlawful practices described above in amounts to be determined at trial, but in no event less than
16 \$500.00 for each violation of 47 U.S.C. § 227. *et seq.*, and \$500.00 for each violation of RCW
17 19.86.010, *et seq.* and/or RCW 19.190.010, *et seq.*

18 I. Order defendant to make Representative Plaintiff and the other class members
19 whole by providing appropriate prejudgment interest, in an amount to be determined at trial, and
20 other affirmative relief necessary to eradicate the effects of the unlawful practices.

21 J. Order defendant to pay Representative Plaintiff and the other class members
22 punitive and/or treble damages to the fullest extent allowed by law, including but not limited to
23 all punitive and/or treble damages for a knowing or willful violation of the Telephone Consumer
24 Protection Act.

25 K. Award Representative Plaintiff and the other class members the costs of this
26 action, including attorneys' fees, as authorized by law and/or as sounds in tort, contract, or
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1 equity.

2 L. Grant any additional or further relief as provided by law or equity which this
3 Court finds appropriate, equitable, or just.

4 RESPECTFULLY SUBMITTED: [DATE].

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² HKM Attorneys is a division of HKM Employment Attorneys LLP.

CERTIFICATE OF SERVICE

On April 4,, 2016, I caused the foregoing document to be filed with the Clerk of the United States District Court, Western District of Washington, using the ECF system, which will cause a copy to be served on all counsel of record.

/s/ Donald W. Heyrich
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